



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO F. L. HATCHER AND SON, INC. FOR THE HATCHER BULK PLANT

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) by the Board to F. L. Hatcher & Son, Inc., owner of the Hatcher bulk petroleum storage facility, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "UST" means underground storage tank as further defined in 9 VAC 25-580-10 and Virginia Code §62.1-44.34:8.
4. "AST" means aboveground storage tank as further defined in 9 VAC 25-91-10 and Virginia Code § 62.1-44.34:14.
5. "Hatcher" means F. L. Hatcher & Son, Inc. a Virginia Corporation licensed to do business in Virginia on December 26, 1979 and assigned Federal Identification Number 54-1126883. Hatcher is the owner of the Hatcher Bulk Facility and the associated ASTs and UST.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 1183.

7. "Director" means the Director of the Department of Environmental Quality.
8. "Order" means this document, also known as a Consent Order.
9. "The Facility" means the Hatcher owned bulk petroleum storage facility and associated ASTs and UST operated by Hatcher and located at 802 Shenandoah Avenue, NW, Roanoke, Virginia.
10. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
11. "Regulations" mean 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of USTs, closure of non-compliant USTs, and release detection requirements, 9 VAC 25-590-10 *et seq.* (Petroleum UST Financial Requirements) and 9 VAC 25-91-10 *et seq.* (Facility and Aboveground Storage Tank Regulations).

Section C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-10 *et seq.*, requires that the USTs at the Facility meet final specific performance requirements for leak detection and corrosion protection by December 22, 1998 and maintain proper registration of the USTs with DEQ. The Regulation at 9 VAC 25-590-10 *et seq.*, requires owners and operators of petroleum UST facilities to meet financial assurance requirements.
2. Hatcher is the operator of the UST at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. Hatcher is the operator of the ASTs at the Facility within the meaning of 9 VAC 25-91-10 and Virginia Code § 62.1-44.34:14.
4. F.L. Hatcher and Sons, Inc. is a bulk terminal located in Roanoke, VA. The facility consists of one underground storage tank and four above ground storage tanks. There are two unregulated above ground storage tanks located at the facility as well.

UST Compliance

5. A UST compliance inspection was conducted on March 18, 2002 at the Facility. As a result of the inspection, the following compliance issues were identified and Hatcher was notified of the compliance issues by a deficiency letter dated March 25, 2002:
 - A 3-year cathodic protection test needed to be conducted on the UST as required by 9 VAC 25-580-90(2)(A).

- Release detection monitoring needed to be conducted on the suction lines to the UST as required by 9 VAC 25-580-140(2)(b).
 - 9 VAC 25-590-10 *et seq.*, Petroleum UST Financial Requirements – Owners and/or operators of regulated USTs are required to show they have the financial resources to clean up a site and compensate injured third parties in the event a petroleum release occurs. The financial assurance documents were not available at the time of the inspection. Compliance may be achieved by submitting to DEQ the original financial responsibility documentation.
6. On July 9, 2002, the Department issued **Warning Letter (WL) No. WL-02-07-WCRO-003** to Hatcher for the three UST compliance issues listed in the March 25, 2003 deficiency letter and listed in Paragraph 5. The Department did not receive a response to the WL from Hatcher as requested in the WL.
 7. On January 9, 2003, the Department issued **Notice of Violation (NOV) No. 03-01-WCRO-006** to Hatcher for the three compliance issues listed in the July 9, 2002 WL.
 8. In response to the NOV, Mr. Frank Hatcher contacted the Department, by telephone, on January 15, 2003. DEQ staff discussed with Mr. Hatcher the necessary steps to bring the facility into compliance with underground and aboveground storage tank requirements. As a follow-up to the conversation, DEQ staff also mailed Mr. Hatcher an informational packet regarding Financial Responsibility requirements.
 9. On February 25, 2003, Department staff mailed a Formal Inspection Notification Letter to Mr. Hatcher announcing the Department's intent to inspect the facility on March 12, 2003.
 10. On March 12, 2003, DEQ staff conducted UST and AST compliance inspections at the facility. At the time of the inspection, Mr. Hatcher provided tank and piping release detection documentation including a June 17, 2002 Three Year Cathodic Protection Test and documentation for demonstrating financial assurance. The remaining compliance issues were as follows:
 - Monitoring wells needed to be marked and secured.
 - A site assessment needed to be conducted as required in 9 VAC 25-580-160a-f in order for Hatcher to use vapor monitoring as a method of release detection.
 11. On March 31, 2003, the Department issued **NOV No. 03-03-WCRO-008** to Hatcher for the compliance issues observed during the March 12, 2003 inspection.
 12. The Department did not receive a response to the NOV from Hatcher as requested in the

NOV. A contractor contacted compliance staff with questions concerning the facility and the contractor verbally notified compliance staff that the vapor monitoring well was now marked and secured.

13. On October 4, 2004, Department enforcement staff contacted Mr. Frank Hatcher by letter. In the letter, the Department requested that Mr. Hatcher respond to the Notices of Violation issued to the facility between October 2002 and March 2003 and the letter included copies of the Notices of Violation for Mr. Hatcher to review.
14. On October 13, 2004, the Department received a response, via letter, from Mr. Hatcher. Mr. Hatcher stated that the facility was in compliance with all applicable regulations. Mr. Hatcher did not provide the Department any documentation to support his claim.
15. On January 10, 2007, Department staff conducted a formal inspection of the UST at the Facility. In addition, file and UST registration documents were also reviewed. The following describes the staff's factual observations made during the inspection.
 - Facility staff was not able to provide documentation that the cathodic protection for the UST had been tested in the past three years. The Facility is required to test the cathodic protection system within 6 months of installation and every 3 years thereafter as stated in 9 VAC 25-580-90(2)(A).
 - Facility staff was not able to provide documentation that release detection monitoring had been conducted on the suction lines as required in 9 VAC 25-580-140(2)(b). The Facility is required to have either a line tightness test conducted every 3 years or another approved method of release detection unless the piping system meets the following: a) the only check valve on the system is located under the pump and b) the slope of the piping allows product to drain back into the tank.
 - Facility staff was not able to provide documentation that release detection monitoring is being conducted on the UST as required in 9 VAC 25-580-160. The Facility is required to use appropriate release detection methods on the UST and maintain a record of the monitoring as required in 9 VAC 25-580-180.
 - Facility staff was not able to provide documentation that the owner/operator had demonstrated adequate financial assurance as required by 9 VAC 25-590-10 *et seq.*
16. On February 9, 2007, the Department issued NOV No. 07-02-WCRO-001 to F.L. Hatcher & Son, Inc. for the four compliance issues outlined in Paragraph 15.
17. On March 19, 2007, Department staff met with Mr. David Hatcher, F.L. Hatcher & Son, Inc. and Jeanne Martin and Jim Lovell, Earth Environmental Consultants, Inc. The purpose of the meeting was to discuss the compliance issues listed in the February 2007 NOV and develop a

plan of action to resolve the remaining issues of apparent non-compliance.

18. During the meeting, the Department was informed that the 3 year Cathodic Protection test had been conducted on June 27, 2006 but the results were not on-site during the inspection. After the January 2007 inspection, Hatcher submitted the test results. This submittal was sufficient to resolve the area of non-compliance listed in paragraph 15, bullet point #1.
19. Mr. Hatcher stated in the meeting that the Facility will pursue a temporary closure of the UST. To address the remaining UST violations, Hatcher will conduct a tank & piping tightness test, complete and update the financial assurance, and submit the necessary registration information to the Department.
20. On April 3, 2007, Hatcher conducted a tank and line tightness test. The test indicated a passing result and the test results were submitted to the Department on April 9, 2007. This submittal was sufficient to resolve the area of non-compliance listed in paragraph 15, bullet point #2.
21. Hatcher had the UST emptied of its contents and is temporarily closed. A Form 7530-2 with a City of Roanoke building permit was submitted to the Department on April 26, 2007. The Department registered the UST as temporarily closed on April 26, 2007. These submittals were sufficient to resolve the area of non-compliance listed in paragraph 15, bullet point #3.
22. Hatcher submitted the necessary UST Financial Assurance documents to the Department on April 9, 2007. This submittal was sufficient to resolve the area of non-compliance listed in paragraph 15, bullet point #4.

AST Compliance

23. On March 12, 2003, Department staff conducted a formal AST compliance inspection at the facility. The following compliance issues were noted during the inspection:
 - Inventory control was not being conducted on applicable ASTs.
 - A Secondary containment certification had not been provided to the Department.
 - A lack of safe fill and shutdown procedures at the facility.
 - Tank No. 1 and No. 2 did not have gauges.
24. As a result of the inspection, the Department issued **NOV-03-04-WCRO-013** on April 30, 2003 for the compliance issues listed in Paragraph 17.
25. The Department did not receive a response to the NOV from Hatcher as requested in the

NOV.

26. On October 4, 2004, Department enforcement staff contacted Mr. Frank Hatcher by letter. In the letter, the Department requested that Mr. Hatcher respond to the Notice of Violation issued to the facility in April 2003 and the letter included a copy of the Notice of Violation for Mr. Hatcher to review.
27. On October 13, 2004, the Department received a response, via letter, from Mr. Hatcher. Mr. Hatcher stated that the facility was in compliance with all applicable regulations. Mr. Hatcher did not provide the Department any documentation to support his claim.
28. On January 10, 2007, Department staff conducted a formal inspection of the ASTs located at the Facility. In addition, file and AST registration documents were also reviewed. The following items describe the staff's factual observations made during the inspection.
 - The updated Oil Discharge Contingency Plan ("ODCP") submitted to the Department appears to be missing several critical items that must be addressed in order for the Department to approve and renew the ODCP for the Facility. Specifically, the ODCP did not provide sufficient information as required by 9 VAC 25-91-170.A.(1, 10, 11, 12, 14, 15, 16, 17, & 20). The Code of Virginia as well as the Regulations requires all facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil to have an approved ODCP as stated in Code § 62.1-44.34:15, 9 VAC 25-91-20.A, 9 VAC 25-91-20.B.3.
 - A certificate for renewal of an existing ODCP was not received by the Department as required by 9 VAC 25-91-170.F.
 - Facility staff was not able to provide to Department staff documentation that inventory control is being conducted on each tank as required by 9 VAC 25-91-130.B.1.
 - Facility staff was not able to provide Department staff documentation that leak detection was being conducted on the tanks and piping as required by 9 VAC 25-91-130.B.7.
 - Facility staff was not able to provide Department staff documentation that the secondary containment had been evaluated or certified as required by 9 VAC 25-91-130.B.2.
 - Facility staff was not able to provide Department staff documentation that daily inspections were being conducted as required by 9 VAC 25-91-130.B.5.a.
 - Facility staff was not able to provide Department staff documentation that weekly inspections were being conducted as required by 9 VAC 25-91-130.B.5.b-c.
 - Facility staff was not able to provide Department staff documentation that a proper

training program had been established as required by 9 VAC 25-91-130.B.6.a.

- Facility staff was not able to provide Department staff documentation that training for personnel performing daily and weekly inspections had been conducted as required by 9 VAC 25-91-130.B.6.d.
 - At the time of the inspection, and according to the submitted ODCP, the Facility was not equipped with a vehicle spill containment system as required by 9 VAC 25-91-130.B.3.b.
 - The registration for the Facility had expired and had not been renewed as required by 9 VAC 25-91-100.F.
 - Facility staff was not able to provide the Department staff documentation demonstrating financial assurance as required by 9 VAC 25-640-10 *et seq.*
29. On February 9, 2007, the Department issued NOV No. 07-02-WCRO-002 to F.L. Hatcher & Son, Inc. for the twelve compliance issues outlined above.
30. On March 19, 2007, Department staff met with Mr. David Hatcher, F.L. Hatcher & Son, Inc. and Jeanne Martin and Jim Lovell, Earth Environmental Consultants, Inc. The purpose of the meeting was to discuss the compliance issues listed in the February 2007 NOV and develop a plan of action to resolve the remaining issues of apparent non-compliance.
31. During the meeting, Hatcher submitted the financial assurance documentation and the registration renewal and fee to Department staff. These two submittals were sufficient to resolve the two areas of non-compliance listed in paragraph 28, bullet points #11 & #12.
32. Additionally, Hatcher submitted to the Department documentation indicating that Hatcher was conducting inventory control, daily inspections, and weekly inspections of the ASTs. The documents indicated that Hatcher began these efforts immediately following the January 2007 inspection. These submittals were sufficient to resolve the three areas of non-compliance listed in paragraph 28, bullet points # 3, #4, #6, & #7.
33. On April 26, 2007, Hatcher submitted a renewal application for the facility's ODCP. This submittal was sufficient to address the area of non-compliance listed in paragraph 28, bullet point # 2.
34. On May 18, 2007, Hatcher submitted a secondary containment certification for the concrete dike surrounding the two 20,000 gallon ASTs. This submittal was sufficient to address the area of non-compliance listed in paragraph 28, bullet point #5.
35. Until installation/upgrade of the vehicle spill containment system listed in paragraph 28, bullet point #10, Hatcher has agreed to implement temporary measures to contain a vehicle

spill if such an event should occur in the interim.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §§62.1-44.15(8a) and (8d) orders Hatcher, and Hatcher agrees, to pay a civil charge of Ten Thousand Seven Hundred Eighty Dollars (\$10,780.00) in settlement of violations noted herein. Payment shall be by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check or money order, Hatcher shall indicate that the payment is submitted pursuant to this Order. Hatcher shall pay the civil charge shall in full no later than 30 days after the effective date of the Order.

2. To remedy the violations described above and bring the Facility into compliance, Hatcher shall perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of HATCHER, for good cause shown by HATCHER, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the Facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, HATCHER admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. HATCHER declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and State Water Control Law, Va. Code § 62.1-

- 44.2 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
5. Failure by HATCHER to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
 6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
 7. HATCHER shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. HATCHER shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HATCHER shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within twenty-four hours of learning of any condition above, which HATCHER intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
 8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
 9. This Order shall become effective upon execution by both the Director, or his designee, and HATCHER. Notwithstanding the foregoing, HATCHER agrees to be bound by any compliance date that precedes the effective date of this Order.
 10. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to HATCHER. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve HATCHER from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By the signature below, HATCHER voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of SEPTEMBER, 2007.

Steven A. Dietrich
Steven A. Dietrich, Regional Director
Department of Environmental Quality

HATCHER voluntarily agrees to the issuance of this Order.

By: David L. Hatcher
David L. Hatcher
Secretary/Treasurer

Date: 7/31/07

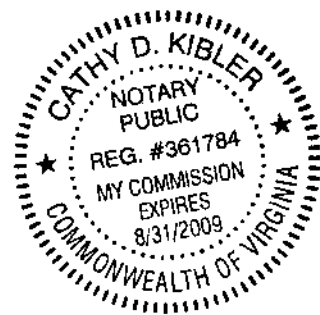
Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 31st day of July, 2007, by David L. Hatcher, Secretary/Treasurer, on behalf of F. L. Hatcher & Son, Inc.

Cathy D. Kibler
Notary Public

My commission expires: 8/31/09



Appendix A – Schedule of Compliance

HATCHER shall:

AST Compliance

1. Within 90 days after the effective date of the Order, provide the Department with documentation indicating that the Facility has instituted the following:
 - A proper training program has been established for Facility personnel;
 - Training for personnel performing daily and weekly inspections has been conducted.
2. Within 90 days after the effective date of the Order, submit an approvable ODCP for the Facility to the Department. The ODCP should address the deficiencies indicated in the February 2007 NOV.
3. Within 90 days after the effective date of the Order, provide the Department with documentation that indicates a proper vehicle spill containment system has been installed at the Facility.
4. HATCHER shall submit written notification to WCRO of the completion of all action items required by this Order **within 14 days of completion.**